

1 HONORABLE BARBARA J. ROTHSTEIN
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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17 STATE OF WASHINGTON,

18 Plaintiff,

19 v.

20 BETSY D. DeVOS, in her official capacity as
21 the United States Secretary of Education, and
22 UNITED STATES DEPARTMENT OF
23 EDUCATION,

24 Defendants.

25 No. 2:20-cv-01119-BJR

26 **MOTION OF THE COUNCIL OF THE
27 GREAT CITY SCHOOLS FOR LEAVE
TO FILE AMICUS CURIAE BRIEF IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION
AND IN EXCESS OF APPLICABLE
PAGE LIMITATIONS**

28 The Council of the Great City Schools (hereinafter the "Council") respectfully moves for
29 leave to file the attached *amicus curiae* brief in support of Plaintiff's motion for preliminary
30 injunction and leave for the filed brief to exceed the page limits of the Court's Standing Order for
31 All Civil Cases by nine pages.

32 The Council is a coalition of 76 of the nation's largest urban public school systems, and is
33 the only national organization exclusively representing the needs of urban public schools. Founded
34 in 1956 and incorporated in 1961, the Council serves as the national voice for urban educators and
35 provides a forum to share best practices. The Council is composed of school districts with
36 enrollments greater than 35,000 students located in cities with a population exceeding 250,000.

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1 Districts located in the largest city of any state are also eligible for membership, based on urban
 2 characteristics. The Council's member districts have a combined enrollment of over 8.2 million
 3 students. Headquartered in Washington, D.C., the Council promotes urban education through
 4 research, instruction, management, technology, legislation, communications, and other special
 5 projects.

6 The Council has prepared the attached brief because its members and the students that they
 7 serve will be harmed by the implementation of the interim final rule adopted by the U.S.
 8 Department of Education (the "Department") on July 1, 2020. *See CARES Act Program; Equitable*
 9 *Services to Students and Teachers in Non-Public Schools*, 85 Federal Register, 39,479 (July 1,
 10 2020) (the "Rule"). If this Rule stands, the Department would illegally divert millions of dollars
 11 allocated under the CARES Act, H.R. 748 116th Cong., 20 U.S.C. § 3401 note (2020), from public
 12 schools serving millions of low-income children to private schools, regardless of the affluence or
 13 financial need of their students. This unlawful diversion would have devastating consequences for
 14 public school districts struggling to re-open safely and for the students they are trying to protect.
 15 The attached brief explains the nature and scope of the harm inflicted by the Department on public
 16 school districts and students by its arbitrary and capricious actions.

17 District courts have "broad discretion" to appoint amicus curiae. *Skokomish Indian Tribe*
 18 *v. Goldmark*, No. C13-5071JLR, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (quoting
 19 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)). "District courts frequently welcome amicus
 20 briefs from non-parties 'concerning legal issues that have potential ramifications beyond the
 21 parties directly involved or if the amicus has unique information or perspective that can help the
 22 court beyond the help that the lawyers for the parties are able to provide.'" *Chong Yim v. City of*
 23 *Seattle*, 2018 WL 5825965 at *1 (W.D. Wash. Nov. 7, 2018) (quoting *Skokomish Indian Tribe*,
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1 2013 WL 5720053 at *1 (internal quotation omitted)). The “classic role” of amicus curiae is to
 2 “assist[] in a case of general public interest, supplement[] the efforts of counsel, and draw[] the
 3 court’s attention to law that escaped consideration.” *Miller-Wohl Co. v. Comm'r of Labor & Indus.*
 4 *State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). This Court has authorized the filing of amicus
 5 briefs in cases that, like this one, concern issues of public importance and raise constitutional questions.
 6 See e.g., *Mitchell v. Atkins*, No. 3:19-cv-5106, Dkt. 109, 110 (W.D. Wash. June 30, 2020) (granting
 7 third-party advocacy groups’ motions for leave to file amicus briefs concerning gun violence
 8 prevention); *Rynearson v. Ferguson*, No. 17-cv-05531, Dkt. 51 (W.D. Wash. Oct. 19, 2018) (same
 9 concerning First Amendment issues); *Hopper v. Melendez*, No. 05-cv-5680, Dkt. 182 (W.D. Wash.
 10 Oct. 23, 2007) (same concerning right to counsel in immigration proceedings).

12 There is good reason for the Court to exercise its discretion here to permit the Council to file
 13 the attached *amicus* brief. Counsel for the proposed *amicus curiae* are familiar with the scope of the
 14 arguments presented by the parties and will not unduly repeat those arguments. Rather, the Council
 15 will draw upon its knowledge of the legislative process and the educational system as well as its
 16 members’ experience in school communities nationwide to underscore the Rule’s unlawfulness and
 17 demonstrate the on-going and irreparable harm the Department’s actions, including the Rule, have
 18 caused and will continue to cause unless enjoined by the Court.

20 In light of the range and complexity of issues to be addressed and the high stakes for the
 21 Council and its members, in addition to the parties, good cause exists to extend the page limits for
 22 the attached amicus brief to 24 pages. The Court already has recognized the complexity and
 23 importance of this case by granting Plaintiff leave to file a brief 24 pages in length. Because of the
 24 urgent need for the parties and other stakeholders, like the Council, to address the matters raised
 25 in the Plaintiff’s motion, the Council has prepared the attached brief.

1 Finally, the Council, through its counsel, has consulted with the Plaintiff, who consents to
2 the filing of this brief. The Council has conferred with counsel for the Defendants who requested
3 that the Council file its motion before they would decide whether or not to consent. For these
4 reasons, the motion for leave to file the attached *amicus curiae* brief and for leave to file a brief 24
5 pages in length should be granted.
6

7 DATED this 31st day of July, 2020.

8 PACIFICA LAW GROUP, LLP

9 By s/Gregory J. Wong
10 Gregory J. Wong, WSBA # 39329
11 1191 Second Avenue
12 Suite 2000
13 Seattle, Washington 98101-3404
14 Telephone: (206) 245-1700
15 Greg.Wong@pacificlawgroup.com

16 HUSCH BLACKWELL LLP

17 John W. Borkowski (IL Bar No. 6320147)
18 Mary Deweese (IL Bar No. 6326512)
19 *Pro hac vice motion forthcoming*
20 120 South Riverside Plaza, Suite 2200
21 Chicago, Illinois 60606
22 Phone: (312) 526-1538
23 Fax: (312) 655-1501
24 john.borkowski@huschblackwell.com
25 mary.deweese@huschblackwell.com

26 Paige Duggins-Clay (TX Bar No. 24105825)
27 *Pro hac vice motion forthcoming*
28 111 Congress Avenue, Suite 1400
29 Austin, Texas 78701
30 Phone: (512) 472-5456
31 Fax: (512) 479-1101
32 scott.schneider@huschblackwell.com
33 paige.duggins-clay@huschblackwell.com

34 Aleksandra O. Rushing (MO Bar No. 68304)
35 Shmuel B. Shulman (MO Bar No. 71175)

1 *Pro hac vice motions forthcoming*
2 190 Carondelet Plaza, Suite 600
3 St. Louis, Missouri 63141
4 Phone: (314) 345-6275
5 Fax: (314) 480-1505
6 aleks.rushing@huschblackwell.com
7 shmuli.shulman@huschblackwell.com

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July, 2020, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing to all counsel of record.

Dated this 31st day of July, 2020.

s/ Thien Tran
Thien Tran, Paralegal/Legal Assistant